

1 II.

2 DISCUSSION

3 In sum, Plaintiff's Objections restate the arguments made in the Joint
4 Stipulation and urge the Court to "reconsider" its reasons. (*See, e.g.*, Objs. at 3.)
5 None of the grounds, however, raised by Plaintiff have caused the Court to alter the
6 Magistrate Judge's recommendation to affirm the Commissioner's denial of benefits.
7 That said, the Court believes that two issues merit brief amplification.

8 First, Plaintiff contends that the R&R erroneously "finds that there is, *in*
9 *essence*, the absence of *objective* findings corroborating a depressive or other mental
10 disorder." (Objs. at 4 (emphasis added).) This argument ignores the many *other*
11 reasons provided by the ALJ, and cited by the R&R, in declining to find Plaintiff's
12 mental impairment to be severe. (*See* R&R at 5-6.) For instance, the ALJ properly
13 rejected the opinions of Dr. LeMaile-Williams and Dr. Duran because, among other
14 things: (1) their opinions were conclusory; (2) their opinions merely echoed
15 Plaintiff's own complaints, which may be disregarded if Plaintiff's complaints have
16 been properly discounted; and (3) any alleged limitations were controlled by
17 medication. Thus viewed holistically, the Court is persuaded that the ALJ
18 considered *all* the medical evidence and correctly concluded that Plaintiff does not
19 suffer from a mental impairment, such that it would have more than a slight effect on
20 his ability to perform basic work activities. In that same vein, any reliance placed
21 merely on the absence of objective findings would also be harmless error, at most.
22 (*See* AR at 564-72.)

23 Second, Plaintiff argues that his "reluctance or avoidance of attending
24 psychotherapy is part and parcel of his disorder in combination with his social
25 being." (Objs. at 8.) However, as noted in the R&R, the ALJ also provided three
26 *other* clear and convincing reasons in discounting Plaintiff's credibility, specifically:
27 (1) a lack of objective evidence; (2) inconsistent statements regarding his daily
28 activities; and (3) a conservative treatment plan. (*See* R&R at 7-8.) In other words,

1 the ALJ's findings relating to Plaintiff's subjective complaints and his ability to
2 perform vocational functions are supported by substantial evidence. They
3 demonstrate that, to the extent the ALJ discounted Plaintiff's credibility, the ALJ did
4 not do so arbitrarily. *Rollins v. Massanari*, 261 F.3d 853, 856-57 (9th Cir. 2001).
5 To that end once again, the Court finds that, assuming any error existed in relying on
6 this particular reason – *i.e.*, avoiding his own psychotherapy – to discount Plaintiff's
7 credibility, the error was harmless. *See Batson v. Comm'r*, 359 F.3d 1190, 1195-97
8 (9th Cir. 2004); *Carmickle v. Comm'r*, 533 F.3d 1155, 1162 (9th Cir. 2008).

9 **III.**

10 **CONCLUSION**

11 Based on the foregoing and pursuant to 28 U.S.C. § 636, the Court has
12 reviewed the Joint Stipulation, all of the records herein, the Report and
13 Recommendation of the United States Magistrate Judge, and the Objections to the
14 Report and Recommendation. The Court has made a *de novo* determination of the
15 portions of the Report and Recommendation to which the Objections were directed.
16 The Court concurs with and adopts the Magistrate Judge's Report and
17 Recommendation. Accordingly, IT IS ORDERED THAT:

18 1. Judgment shall be entered **AFFIRMING** the decision of the
19 Commissioner denying benefits.

20 2. The Clerk shall serve copies of this Order and the Judgment herein on
21 the parties.

22
23 DATED: November 9, 2011.

24 

25 HON. GEORGE H. WU

26 UNITED STATES DISTRICT JUDGE
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